THE BOMBAY KHAR LANDS ACT, 1948.

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BOMBAY ACT No. LXXII OF 1948.[1]

[THE BOMBAY KHAR LANDS ACT, 1948.]

[*31st December 1948.*]

Amended by Bom. 18 of 1949.

An Act to provide for the protection and improvement of khar lands and the reclamation of tidal lands in the Province of Bombay by the construction and maintenance of embankments and for certain other matters.

WHEREAS it is expedient to provide for the protection and improvement of khar lands and the reclamation of tidal lands in the Province of Bombay by the construction and maintenance of embankments and for certain other matters; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (*1*) This Act may be called the Bombay Khar Lands Act, 1948.

(*2*) It shall extend to the whole of the Province of Bombay.

(*3*) It shall come into force in such area and on such date as the Provincial Government may, by notification in the *Official Gazette*, direct.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context—

(*a*) "Board" means the Khar Lands Development Board established under section 3;

(*b*) "Chairman" means the Chairman of the Board;

(*c*) "embankment" includes—

(*i*) every bank, dam, wall and dyke made or used for excluding water from, or retaining water upon, any tidal or khar land or for excluding salt water from entering into any adjoining sweet water nallas;

(*ii*) every sluice, spur, groyne, training-wall, berm, or other work annexed to, or portion of, any such embankment;

(*iii*) every bank, dam, dyke, wall, groyne or spur made, or erected for the protection of any such embankment or of any tidal or khar land from erosion or overflow by or of tides, waves or waters; and

(*iv*) all buildings intended for inspection and supervision;

(*d*) "khar land" means such tidal land as is made cultivable by protecting it by means of an embankment from the sea or tidal river, and includes all such land in whatever manner described, whether as khar, khajan, kharepat, gazni or otherwise;

(*e*) "member" means a member of the Board;

(*f*) "prescribed" means prescribed by rules made under this Act;

(*g*) "sea" includes bay, inlet, creek or an arm of the sea;

(*h*) "tidal land" means such parts of bed or shore of the tidal water as are covered and uncovered by the flow and ebb of the tide at ordinary spring tides together with the adjoining bed or shore not exceeding two furlongs in distance from the spring tide mark;

[1] For Statement of Objects and Reasons, *See Bombay Government Gazette*, 1948, Part V, page 354.

(*i*) "tidal water" means any part of the sea or river within the flow and ebb of the tide at ordinary spring tides ;

(*j*) "unit" means a unit formed by the Board under sub-section (*2*) of section 11.

Establishment of Khar Lands Development Board.

3. (*1*) As soon as may be after the commencement of this Act, the Provincial Government shall establish the Khar Lands Development Board. The Board shall consist of a Chairman and of members as specified in sub-section (*2*).

(*2*) The Board shall consist of three *ex-officio* members and eight other members :—

(*a*) The ex-officio members shall be :—

(*i*) Secretary to the Government of Bombay, Revenue Department ;

(*ii*) Secretary to the Government of Bombay, Agriculture and Rural Development Department ;

(*iii*) Director of Agricultural Engineering, Bombay Province.

(*b*) The other members shall be eight in number, two each representing the Thana and the Kolaba districts and one each representing the Surat, Broach, Ratnagiri and Kanara districts.

(*3*) The members other than the *ex-officio* members shall be selected by the Provincial Government from a panel of representatives elected in the prescribed manner by the landlords and tenants of lands in a unit :

Provided that the Provincial Government may, in establishing the Board for the first time immediately after the coming into force of this Act, nominate the said eight members in the same proportion to represent the said districts.

(*4*) The names of members selected or nominated under sub-section (*3*) shall be published in the *Official Gazette*.

(*5*) The members other than *ex-officio* members shall possess such qualifications as may be prescribed.

Term of office ; vacancies.

4. (*1*) The members other than *ex-officio* members shall hold office for a period of three years from the date of the publication of their names under sub-section (*4*) of section 3 :

[1][Provided that such members of the Board established for the first time immediately after the coming into force of this Act shall in the first instance be appointed for a period of one year, but shall be eligible for re-appointment every year for the total period not exceeding five years from the date of the establishment of the Board.]

(*2*) If any such member—

(*a*) dies ; or

(*b*) is absent from the meetings of the Board for more than three consecutive meetings of the Board ; or

(*c*) leaves the Province of Bombay with the intention of being absent therefrom for more than three consecutive months ; or

(*d*) resigns ; or

(*e*) refuses to act or becomes incapable of acting, his office shall thereupon become vacant.

[1] This proviso was substituted for the original by Bom. 18 of 1949, s. 2.

(*3*) All casual vacancies among the members other than the *ex-officio* members shall be filled up as soon as it conveniently may be by selection in the manner specified in sub-section (*3*) of section 3 ; and the person selected to a casual vacancy shall hold office so long as the member in whose place he is selected would have held it if the vacancy had not occurred.

(*4*) No act done by the Board shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Board.

Power of Provincial Government to nominate members in certain circumstances.

5. Notwithstanding anything contained in section 3 or 4, if the landlords and tenants of lands in a unit fail to elect a panel of representatives or if any of the representatives so elected refuse to act as members, the Provincial Government may nominate such persons as members who in its opinion are suitable to represent the interest of landlords and tenants in the said unit.

Incorporation of Board.

6. The Board constituted under section 3 shall be a body corporate by the name of " The Khar Lands Development Board " and shall have perpetual succession and a common seal and may sue and be sued in its corporate name and shall be competent to acquire and hold property both moveable and immovable and to contract and to do all things necessary for the purposes of this Act.

Power of Board to make by-laws.

7. (*1*) The Board may with the previous sanction of the Provincial Government make by-laws consistent with this Act and the rules made thereunder for all or any of the following matters :—

(*a*) the manner in which its business shall be transacted ;

(*b*) the definition of its power to enter into contracts, which shall be binding on it and the manner in which such contracts shall be executed ;

(*c*) any other matter for which provision is required to be made for the efficient discharge of its duties or business.

(*2*) The Board may also make regulations for carrying out the objects of a scheme which has come into force under this Act.

Appointment of Chairman[1]*.

8. [2]* The Provincial Government shall appoint a Chairman. The Chairman so appointed shall hold office for a period of three years from the date of his appointment :

[3][Provided that the Chairman of the Board established for the first time immediately after the coming into force of this Act shall in the first instance be appointed for a period of one year, but shall be eligible for reappointment every year for the total period not exceeding five years from the date of his appointment.]

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Appointment of [4]* officers and servants.

9. (*1*) The Provincial Government may appoint [5][the Secretary and] such other officers and servants as may be required to enable the Board to discharge its functions under this Act.

(*2*) The Board may, with the previous sanction of the Provincial Government, consult such technical advisers, as it thinks necessary for the purpose of carrying out the objects of this Act and they shall be paid such remuneration as may be determined by the Board with the previous sanction of the Provincial Government.

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[1] The words " and Secretary " were omitted by Bom. 18 of 194 , s. 3.
[2] The brackets and figure " (*1*) " and sub-section (*2*) were omitted, *ibid.*
[3] This proviso was substituted for the original, *ibid.*
[4] The word " other " was omitted, *ibid.*, s. 4.
[5] These words were inserted, *ibid.*

(*3*) The officers and servants [1][appointed under sub-section (*1*)] shall be the servants of the Provincial Government and they shall draw their pay and allowances from the Provincial revenues.

Board to pay costs on account of pay, pension, etc., of officers and servants.

10. The Board shall pay every year out of its fund to the Provincial Government such cost as the Provincial Government may determine on account of the pay, pension, leave and other allowances of the officers and servants appointed under this Act.

Powers and duties of Board.

11. (*1*) It is shall be the duty of the Board to promote the development of khar lands in the most efficient and economical manner.

(*2*) Without prejudice to the generality of the foregoing power, the Board may—

(*a*) cause survey to be made of all the khar and tidal lands in the Province to which this Act applies ;

(*b*) prepare a list of—

(*i*) all embankments,

(*ii*) the lands benefited or to be protected by each such embankment,

(*iii*) the names of landlords and tenants of such lands ;

(*c*) from units having regard to the contours of embankments constructed or to be constructed for the protection of lands and the homogeneity of the plots of lands protected or to be protected thereby ;

(*d*) prepare schemes for the construction, maintenance, and preservation of embankments and other prescribed objects ;

(*e*) remove encroachments on inland waterways ;

(*f*) supervise all work in connection with the better cultivation of khar lands ;

(*g*) reclaim tidal lands for the purpose of bringing them under cultivation ; and

(*h*) generally do all that is necessary for carrying out the objects of the Act.

Power of Board to prepare scheme.

12. (*1*) The Board may prepare a scheme for each unit for the purpose of carrying out its duties under section 11.

(*2*) A scheme prepared under sub-section (*1*) shall contain the following particulars, namely :—

(*i*) the objects of the scheme ;

(*ii*) the approximate area of the lands likely to be included in or affected by the scheme ;

[1] This portion was inserted by Bom. 18 of 1949, s. 3.

(*iii*) a plan showing the approximate area included in or affected by the scheme ;

(*iv*) the persons, including the Crown, affected by the scheme ;

(*v*) the kind of embankment to be constructed or maintained under the scheme ;

(*vi*) a detailed estimate of the cost of the scheme ;

(*vii*) such other particulars as may be prescribed.

Publication of scheme.

13. (*1*) The scheme prepared under section 12 shall be published in the *Official Gazette* and in the village and at the headquarters of the taluka or mahal and of the district in which the lands proposed to be included in the scheme are situate.

(*2*) The Board shall, on publication of the scheme, require all persons affected by the scheme who wish to make any objections to the scheme or part thereof to submit their objections in writing to such person as the Board may authorize in this behalf or appear before him within one month of the publication of the scheme in the *Official Gazette* under sub-section (*1*) or within fifteen days from the date of the publication of the scheme in the village under sub-section (*1*) whichever period expires later.

Report of authorized person.

14. (*1*) The person authorized under sub-section (*2*) of section 13 shall hear such objections as are made to him in person, consider all objections duly submitted under the said sub-section (*2*) and submit his report together with the objections to the Board.

(*2*) Such person may, while submitting his report under sub-section (*1*), recommend any modifications which in his opinion are required in any of the particulars contained in the scheme prepared by the Board under section 12.

Power of Provincial Government to sanction scheme with or without modification.

15. (1) After consideration of the objections and the report submitted to it under sub-section (*1*) of section 14, the Board shall within the period prescribed submit the draft scheme with any modifications which it may have made therein together with the objections forwarded to it, to the Provincial Government and shall at the same time apply for its sanction.

(*2*) After receiving such application and after making such inquiry, as it may think fit, the Provincial Government may within the period prescribed sanction the scheme with or without modification and subject to such conditions as it may think fit to impose or refuse to give sanction.

(*3*) If the scheme is sanctioned under sub-section (*2*), it shall be published in the *Official Gazette* and in the village and at the headquarters of the taluka or mahal and of the district in which the lands included in the scheme are situate.

(*4*) In considering the objections, the decision of the Board on the question whether or not any land included in the scheme, is benefited by, or will be protected under, the scheme shall be conclusive evidence on the question.

Effect of scheme.

16. On the date on which the scheme is published in the *Official Gazette* under sub-section (*3*) of section 15 it shall come into force and shall have effect as if it were enacted in this Act.

Execution of scheme.

17. After the scheme has come into force under section 16, the Board shall execute the scheme in accordance with the rules prescribed in that behalf.

Power of Board to make regulations.

18. For the purpose of carrying out the objects of the scheme which has come into force under section 16, the Board may make regulations requiring any person or class of persons who in the opinion of the Board is or are interested in or affected by the scheme or the public generally to take certain action or to refrain from doing certain acts in respect of any matters supplementary and incidental to the scheme.

Committees for units.

19. The Board shall appoint a Committee for each unit to be constituted in the prescribed manner and it shall be the duty of the Committee so appointed to maintain and repair embankments included in the unit to which the scheme relates. The Committee shall exercise such powers and perform such other duties as the Board may determine.

Acquisition of land, right or interest.

20. If at any time, on an application of the Board, it appears to the Provincial Government that any land or the right or interest of any person in any land should for the purposes of any scheme under the Act be compulsorily acquired, it shall be lawful for the Provincial Government to publish a notification to that effect in the *Official Gazette*. The notification so published shall be deemed to be a declaration under section 6 of the Land Acquisition Act, 1894, and shall be conclusive as if it was made under the said provision and the land, right or interest in the land shall be deemed to be needed for a public purpose within the meaning of the said Act. On the publication of the notification, the Collector shall proceed to take order for the acquisition of the land, right or interest, as the case may be, and the provisions of the said Act shall *mutatis mutandis* apply to the determination of the amount of compensation, the apportionment of the compensation and other matters relating to the acquisition of the said land, right or interest. The Provincial Government may make rules in all matters connected with the enforcement of the said provisions in so far as they are applicable to the acquisition of such land, right or interest : I of 1894.

Provided that where any land which is acquired has remained fallow for three successive years immediately preceding the date of the notification, the market value of such land shall not be assessed to be more than twice the amount of annual assessment payable in respect thereof.

Claim for compensation for consequential damage.

21. Subject to the provisions of section 23, whenever any land other than land acquired for the purposes of this Act or any right of fishery, right of drainage, right of the use of water or other right of property shall have been injuriously affected by any act done, or any scheme executed, under the provisions of this Act, the person in whom such property or right is vested may prefer a claim in writing to the Collector for compensation and thereupon the provisions of the Land Acquisiton Act, 1894, shall, so far as may be, *mutatis mutandis*, apply for the determination of the compensation, apportionment and payment thereof. I of 1894.

Limitation to claim for compensation.

22. No claim under section 21 shall be entertained if it is made later than two years next after the completion of the work by which such right is injuriously affected.

No compensation in certain cases for use or removal of earth.

23. Any land which, before the commencement of this Act, has been used for the purpose of obtaining earth or other materials for the construction or repair of any embankment shall be deemed to be at the disposal of the Board for such purpose without payment of compensation for the use or removal of such earth or other materials.

Power of Board to regulate fishing rights.

24. (*1*) Notwithstanding any custom, usage, law or contract to the contrary no person shall fish or exercise the right of fishery in any water on any tidal or khar land to which the provisions of this Act apply except under a licence granted by the Board in this behalf.

(*2*) The licence granted under sub-section (*1*) shall be granted on the payment of such fees and subject to such restrictions and on such conditions and shall be in such form and contain such particulars as may be prescribed.

Contribution towards cost of scheme.

25. (*1*) The cost of the scheme which has come into force under section 16 shall be met by a contribution by the Provincial Government and the landlords and tenants in the proportion specified in sub-section (*2*).

(*2*) The Provincial Government may contribute 40 per cent. of the cost and the landlords and tenants shall respectively contribute 40 per cent. and 20 per cent. of such cost :

Provided that in any case where any land included in the scheme has not been leased to a tenant, the contribution to be borne by the owner of the land shall be 60 per cent. of such cost :

Provided further that the Provincial Government may prescribe by rules made in this behalf the manner in which the contribution of 20 per cent. may be levied from tenants and to the extent of the same percentage from owners in lieu of cash payment.

Application for loan.

26. The landlords and tenants of lands who are not able to pay their share of the contribution towards the cost of the scheme under section 25 may within the prescribed period make an application to the Provincial Government for the grant of a loan for the purpose of paying their share of such contribution.

Power of Provincial Government to grant loans.

27. When an application for a loan is made under section 26, the Provincial Government may grant the loan in accordance with the rules from time to time made in this behalf.

Recovery of loans.

28. Every loan made in accordance with such rules, all interest (if any) chargeable thereon and the costs (if any) incurred in making or recovering the same shall, when they become due, be recoverable from the person to whom the loan was made, or from any person who has become surety for the repayment thereof, as if they were arrears of land revenue or costs incurred in recovering the same due by the person to whom the loan was made or by his surety.

Liability of joint borrowers as among themselves.

29. When a loan is granted under section 27 to persons on such terms that all of them are jointly and severally bound to the Provincial Government for the payment of the whole amount payable in respect thereof, and a statement showing the portion of that amount which as among themselves each is bound to contribute is entered upon the order granting the loan and is signed, marked or sealed by each of them or his agent duly authorized in this behalf and by the officer making the order, that statement shall be conclusive evidence of the portion of that amount which as among themselves each of those persons is bound to contribute.

Forfeiture of lease of land for failure to pay contribution.

30. If any person holding any land on lease from the Provincial Government fails to pay his share of the contribution under section 25 in respect of such land, within such time as the Provincial Government may fix to the Provincial Government, the Collector may dispose of the land in accordance with the rules made in this behalf under section 46. Such lease shall be determined by forfeiture to the Provincial Government, notwithstanding anything contained in any law for the time being in force and unless the Collector otherwise directs, be freed from all rights, incumbrances and equities theretofore, created in favour of any person other than the Crown in respect of such land.

Levy of annual contribution.

31. (*1*) All landlords and tenants and all owners of lands benefited or protected by embankments included in a scheme under this Act shall pay to the Board an annual contribution which shall be levied and paid in such manner and at such rate and subject to such conditions, if any, as may be prescribed.

(*2*) The decision of the Board on the question whether any land is benefited or protected by an embankment under this Act shall be conclusive evidence on such question.

Presentation of budget estimates.

32. The budget estimates of the Board for each financial year shall be presented to the Board before the 1st day of March in the preceding financial year by the Chairman, and the budget as finally passed shall be subject to the approval of the Provincial Government which shall have power to reduce any item in the estimates of expenditure and to restore any provision which it considers to be essential for the safe and efficient conduct of the business of the Board.

Restriction on unbudgeted expenditure.

33. (*1*) Save where in the opinion of the Board circumstances of extreme urgency have arisen, no sum exceeding Rs. 25,000 shall be expended by the Board unless such sum has been included in the budget approved by the Provincial Government under section 32.

(*2*) Where any such sum is expended under circumstances of extreme urgency a report thereon shall be made as soon as practicable to the Provincial Government.

Custody and disbursement of monies.

34. (*1*) All monies received by the Board shall be credited into a separate account maintained for the purpose in the Government Treasury.

(*2*) All funds for disbursement shall be drawn by means of cheques which shall be signed by the Chairman of the Board or such other member of the Board as the Chairman may, with the approval of the Board, authorize in this behalf.

Provisions for audit.

35. The accounts of the Board shall be maintained in such form and shall be subject to such audit, by such agency and on such terms and conditions as the Provincial Government may prescribe.

Supply of copies of budget and accounts.

36. The Board shall furnish each financial year to the Provincial Government a copy of its budget and of the accounts of the preceding financial year.

Fund.

37. (*1*) The Board shall have its own fund and the following monies shall be placed to the credit thereof—

(*a*) the fees received under section 24;

(*b*) all contributions paid to the Board under section 25 ; and

(*c*) seventy-five per cent. of the annual contributions paid to the Board under section 31.

(*2*) The balances of the fund and the interest accruing thereon shall be expended by the Board in such manner and for such purposes as may be prescribed.

Sinking fund.

38. The Board shall have also a sinking fund to which shall be credited twenty-five per cent. of the annual contributions paid to the Board under section 31. The Board may apply the sinking fund to the repair of breaches in embankments included in a scheme caused by tempest, flood or other irresistible force and to such other purposes as may be prescribed.

Penalty.

39. Any person who contravenes or causes any contravention of any of the provisions of a scheme which has come into force under section 16 or any of the regulations made under section 18 or does any act which causes damage to any of the works carried out under the scheme or obstructs any person in the due exercise of his powers or execution of his duties under this Act or contravenes the provisions of any rules made, or fails to comply with the conditions of a licence granted, under this Act, shall, on conviction, be punishable with imprisonment for a term which may extend to one month or with fine which may extend to fifty rupees or with both.

Recovery of amounts due.

40. Save as otherwise expressly provided in section 30, all amounts due under this Act shall be recoverable as arrears of land revenue.

Right of entry.

41. For the purpose of preparing, sanctioning or executing any scheme or otherwise for carrying out the objects of this Act, any person duly authorized by the Board or the Committee appointed by the Board under this Act may, after giving such notice as may be prescribed, to the owner or occupier or other person interested in any land enter upon, survey and mark out such land and do all acts necessary for such purposes.

Inquiries to be held summarily.

42. (*1*) The person authorized under sub-section (*2*) of section 13 shall, if he desires to make any inquiry, make the inquiry in the manner provided for holding a summary inquiry under the Bombay Land Revenue Code, 1879, and all the provisions contained in the said Code relating to the holding of a summary inquiry shall, so far as may be, apply.

Bom. V of 1879.

(*2*) Such person as well as the Board shall have the same powers for summoning and enforcing the attendance of any person and examining him on oath and compelling the production of documents as are vested in the revenue officers under the Bombay Land Revenue Code, 1879.

Bom. V of 1879.

Registration of document, plan or map in connection with scheme not required.

43. (*1*) Nothing in the Indian Registration Act, 1908, shall be deemed to require the registration of any document, plan or map prepared, made or sanctioned in connection with a scheme which has come into force.

XVI of 1908.

(*2*) All such documents, plans and maps shall, for the purposes of sections 48 and 49 of the Indian Registration Act, 1908, be deemed to be registered in accordance with the provisions of that Act :

XVI of 1908.

Provided that documents, plans and maps relating to the sanctioned scheme shall be accessible to the public in the manner prescribed.

Certain persons to be public servants.

44. The Chairman, members and Secretary of the Board, the members of any committee or officers appointed by the Board and the person authorized under sub-section (*2*) of section 13 shall be deemed to be public servants within the meaning of the Indian Penal Code. XLV of 1860.

Protection of persons acting in good faith.

45. (*1*) No suit, prosecution or other legal proceedings shall be instituted against any public servant or person duly authorized under this Act in respect of anything in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

(*2*) No suit or prosecution shall be instituted against any public servant or person duly authorized under this Act in respect of anything done or intended to be done under this Act, unless the suit or prosecution has been instituted within six months from the date of the act complained of.

Rules.

46. (*1*) The Provincial Government may, by notification in the *Official Gazette*, make rules for the purpose of carrying into effect the provisions of this Act.

(*2*) In particular and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters :—

(*a*) the manner of electing panel of representatives by landlords and tenants of a unit under sub-section (*3*), and the qualifications to be possessed by non-official members of the Board under sub-section (*5*), of section 3 ;

(*b*) the other objects for which a scheme may be prepared by the Board under clause (*d*) of sub-section (*2*) of section 11 ;

(*c*) the other particulars to be prescribed under clause (*vii*) of sub-section (*2*) of section 12 ;

(*d*) the period within which the Board shall submit the draft scheme, and the period within which the Provincial Government may sanction the draft scheme, under section 15 ;

(*e*) execution of a scheme under section 17 ;

(*f*) the manner of constituting a committee for each unit under section 19 ;

(*g*) matters connected with the acquisition of land, right or interest under section 20 ;

(*h*) the fees for the grant of a licence, the restrictions subject to which and the conditions on which a licence shall be granted, the form of the licence and the particulars to be contained therein, under section 24 ;

(*i*) the manner in which the contribution of 20 per cent. may be levied from tenants and to the extent of the same percentage from owners in lieu of cash payment under section 25 ;

(*j*) the period within which an application for a loan may be made under section 26 ;

(*k*) grant of a loan under section 27 ;

(*l*) disposal of land under section 30 ;

(*m*) the manner in which, the rate at which and the conditions subject to which the annual contribution shall be levied and paid under sub-section (*1*) of section 31 ;

(*n*) the form of accounts to be maintained, the agency of audit and the terms and conditions of audit, under section 35 ;

(*o*) the manner in which and the purposes for which balances of the fund and the interest accruing thereon shall be expended under sub-section (*2*) of section 37 ;

(*p*) the other purposes for which sinking fund may be applied under section 38 ;

(*q*) the notice to be given under section 41 ;

(*r*) the manner in which the documents, plans and maps relating to the sanctioned scheme shall be accessible to the public under the proviso to sub-section (*2*) of section 43 ;

(*s*) any other matter which is or may be prescribed under this Act.

(*3*) All rules made under this section shall be subject to the condition of previous publication.